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City of Englewood
OFFICE OF THE CITY MANAGER

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October 6, 1999

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 80554

Ex Parte Letter re: Cases WT 99-217; CC 96-98

Dear Secretary Salas:

Enclosed are two (2) copies of an ex parte presentation in the above referenced proceeding.

Sincerely,


Leigh Ann Hoffhines
Communications Specialist

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City of Englewood
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October 4, 1999

Chairman William Kennard
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Ex Parte Filing in Cases WT 99-217; CC 96-98

Dear Chairman Kennard:

Please do not adopt the rule proposed in the above cases, which would allow any phone company to serve any tenant of a building and to place their antenna on the building roof.

In some states 70 or more new phone companies have been certificated to provide service. Add in the wireless phone companies, and under your proposed rule, you could have 100 companies allowed to place their wires in a building, and their antennas on the roof — all without the landlord's permission.

The FCC lacks the authority to do this. It would violate basic property rights. A landlord, city, or condominium owner has the right to control who comes on their property. Congress did not give the FCC the authority to condemn space for 100 phone companies in every building in the country.

The FCC cannot preempt state and local building codes, zoning ordinances, environmental legislation, and other laws affecting antennas on roofs. Zoning and building codes are purely matters of state and local jurisdiction, which, under Federalism and the Tenth Amendment, you may not preempt.

For example, building codes are imposed in part for engineering-related safety reasons. These vary by region, weather patterns, and building type, such as the likelihood of earthquakes, hurricanes, and the amount of snow and ice a particular area receives. If antennas are too heavy or too high, roofs can collapse. If the antennas are not properly secured, they run the risk of blowing over and damaging the building, its inhabitants, and/or passers-by.

Similarly, zoning laws are matters of local concern which protect and promote public health, safety, and welfare; ensure compatibility of uses; and preserve property values and the character of our communities. We may restrict the numbers, types, locations, size, and aesthetics of antennas on buildings to achieve these legitimate goals and still ensure that needed services are provided. This requires us to balance competing concerns, which we do every day, with success.

The application of zoning principles is highly dependent on local conditions. These vary greatly from state to state, and from municipality to municipality. We have successfully applied these principles and balanced competing concerns for eighty years. Zoning has not unnecessarily impeded technology or the development of our economy, nor will it in this case. There is no basis to conclude that this brand new technology (wireless fixed telephones) with such an unproven track record has encountered problems on a scale massive enough to warrant Federal action.

Local management of rights-of-way is essential to protect the public health, safety and welfare. Congress has specifically prohibited you from acting in this area.

We believe the telephone providers' complaints about rights-of-way management and fees are exaggerated. There have only been about a dozen court cases nationwide since the 1996 Telecommunications Act was passed. With 38,000 municipalities nationwide and thousands of phone companies, this small number of cases shows that the system is working.

Finally, we are surprised that you suggest that the combined federal, state, and local tax burden on new phone companies is too high. The FCC has no authority to affect state or local taxes any more than it can affect federal taxes.

For these reasons, we urge you to reject the proposed rule and take no action on rights-of-way and taxes.

Sincerely,



Thomas J. Burns
Mayor

cc:

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